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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/890,487	10/23/2001	Kevin Patrick Galvin	P/3653-7	1749

2352 7590 12/29/2003

OSTROLENK FABER GERB & SOFFEN  
1180 AVENUE OF THE AMERICAS  
NEW YORK, NY 100368403

EXAMINER

KOHNER, MATTHEW J

ART UNIT	PAPER NUMBER
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3653

DATE MAILED: 12/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	09/890,487	GALVIN, KEVIN PATRICK	
	Examiner	Art Unit	
	Matthew J Kohner	3653	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 December 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3 and 5-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,5-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All   b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION*****Response to Arguments / Amendments***

Applicant presents two arguments. First, applicant argues regarding the position of the entry of the fluidization fluid into the fluidization chamber. Second, applicant argues that in the claimed invention the particles are segregated between the plates according to size and density.

Applicant has amended the independent claim to include the limitation of the fluidization fluid entering the fluidization from below so that the fluid flows upwardly in the chamber. This does not appear to define over the prior art of record. Morris discloses a pipe (8) which enters the fluidization chamber from the bottom (See Fig. 1). The pipe (8) provides the fluidization fluid which flows upwardly in the chamber (Col. 3, lines 40+) and is discharged from the top of the fluidization chamber. Applicant states that the claimed invention is distinct from Morris because in Morris the flow is always downwards. However, the claimed invention appears to operate just as Morris (compare Applicant's Fig. 3 with Morris Fig. 1).

Applicant further states that the claimed invention is distinct from Morris because the high velocity turbulence between the plates in Morris causes the suspended particles to go with the flow whereby no separation takes place in the channels formed between the plates. However, contrary to applicant's position, *separation does take place in the channels formed between the plates*. Morris discloses that a "single passing through one column will yield a mixture almost totally free from particles of less than the minimum desired size" (Col. 4, lines 28+). The segregation (due to size, density) is caused by the baffles.

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Accordingly, since the amendments do not define over Morris, the rejection of the claims is maintained.

Additionally, in regard to applicant's statement that the claimed invention is distinct from Morris because the high velocity turbulence between the plates in Morris causes the suspended particles to go with the flow whereby no separation takes place in the channels formed between the plates, Morris discloses a region in the fluidization chamber in which is non-turbulent and separates particles based on size. Morris discloses the turbulent flow is eliminated at the top of the column and in this top section "all particles of greater size than the predetermined minimum are permitted to settle out and return to the system" (Col. 6, lines 32+).

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 5-12 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 2,426,839 to Morris.

Morris discloses a classifier for segregating particles by size density wherein the classifier includes:

- a fluidization chamber adapted to contain a fluidization bed (See Fig. 1);

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- a fluidization device (8) for providing a flow of fluidization fluid to enter into the fluidization chamber from below (See Fig. 1) such that the fluidization fluid may flow upwardly in the chamber (Col. 3, lines 40+); and

- at least one array of inclined plates (see e.g. 25) mounted within the fluidization chamber positioned such that in use, particles elutriated by the upwardly flowing fluidization fluid within the chamber flow upwardly into the array where the particles are caused to be segregated between the plates, and to report above or below the plates according to the size or density of the particles. Examiner notes that vertical baffles 32 are also considered inclined plates since applicant has not defined "inclined" in any particular fashion and vertical baffles 32 are inclined from the horizontal (See Fig. 1).

In regard to claim 3, all arrays extend across the chamber (See Fig. 1).

In regard to claims 5, 7, 8, 9 and 12 see Fig. 1.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew J. Kohner whose telephone number is 703-305-8496.

The examiner can normally be reached on Mon-Fri 9-5:30.

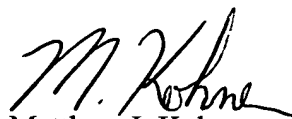
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald Walsh can be reached on 703-306-4173. The fax phone number for the organization where this application or proceeding is assigned is 703-305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

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Matthew J. Kohner

Examiner

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MJK



DONALD P. WALSH  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600